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ABSTRACT

The decision whether a woman has consented to sexual intercourse is rarely determined by the woman herself. Often, instead, a woman's consent, and ultimately her sexuality, is determined for her by others--her partner, the community, or the court system. Women in this culture have traditionally had very little power to control their own bodies and their own sexuality, ironically, while held responsible for its consequences. In the examination of rape and its treatment by the legal system, the woman's voice is drowned out and lost. Female consent has been defined traditionally from the male perspective. Sexual scripts create a prototype of the consenting female. The prototype consists of a cluster of attributes and behaviors indicative of willingness to engage in sexual intercourse. Traditional views render nonconsent virtually impossible. Without evidence of nonconsent, there can be no crime, and the problem of acquaintance rape becomes trivialized--it is really "just sex." A feminist alternative argues that rape must be viewed from the woman's point of view. Women desire sex based on mutual attraction, that involves minimal pressure and two-way communication about each partner's desire. A feminist perspective also suggests that a woman has the right to be sexually provocative. Finally, male-female interactions in general, and the dating situation in particular, must be reconceptualized; relationships should be based on mutual respect and trust. (ABL)

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The Social Construction of Consent:

Sexual Scripts and Acquaintance Rape

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The previous presentations have argued that sexuality is constructed to support male domination. This discussion of rape, not surprisingly, continues this theme. The major recurrent theme in traditional, androcentric discourses of rape is that a woman is responsible for the consequences of her sexuality and provocative behavior. Various cultural myths about women, men, and sexuality converge to support the conclusion that sexual assault is seduction and submission is consent (Pineau, 1989).

The earlier presentations elaborated the various myths that underlie the theme that a woman must accept the consequences of her sexuality. I will repeat four. First, men's sexual drive is considered greater than women's, and as an undeniable physical force may reach a point at which it cannot be controlled. If a woman's provocativeness arouses the man to this point, she must accept the consequences. Second, women are not to freely express their own sexuality; their proper duty is to respond to the needs of her partner. Third, heterosexist norms suggest that women are

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to be dominated by men and that male overpowerment is both desirable and pleasurable (surely a heterosexual male fantasy, as Laura Brown noted earlier). Lastly, a goal for women of physical attractiveness is to be "sexy." However, the woman is confronted with an irresolvable paradox--how to be attractive, i.e., appealing to the opposite sex, and at the same time avoid being provocative, lest she arouse a man to the point of no return. Once again, she must accept the consequences of her sexuality. The issue of consent in acquaintance rape is the ultimate convergence of each of the issues previously discussed. When the various adrocentric and heterosexist values, beliefs, and behaviors have gone to the extreme in the expression of male sexuality, rape is the consequence.

This paper proposes that the decision whether a woman has consented to sexual intercourse is rarely determined by the woman herself. Often, instead, a woman's consent, and ultimately her sexuality, is determined <u>for</u> her by others--her partner, the community, or the court system. Women in our culture traditionally have very little power to control their own bodies and their own sexuality, ironically, while held responsible for its consequences. The influence of the culture in ultimately determining a woman's consent will be examined in this paper. This topic is so vitally important now, as the prevalence of rape, in particular, acquaintance rape, is devastatingly high. For example, surveys inform us that one in two college women will experience some form of unwanted sexual contact by her early twenties, and 15% will be raped, usually by a partner (Koss, Gidycz, & Wisniewski, 1987). These statistics suggest that sexual assault is more than just "kids fooling around," "boys being boys,", or

miscommunication. True miscommunication is premised on a state of equality between the rapist and his victim.

> Then and only then are the frequently used phrases like "negotiated order," "shared misunderstandings," or "failure to communicate" credible in that the victim presumably has the power to abort the sequence of events leading to the rapist's assault (Schwendinger & Schwendinger, 1983, p. 68).

In fact, in our examination of rape in the culture and its treatment by the legal system, we find the woman's voice is drowned out and lost.

Sexual Scripts

Within our culture, sexual scripts prescribe males to be the predator and females the prey (LaPlante, McCormick, & Branningan, 1980). Young men are socialized to be sexually dominant and to "seduce" the woman. Young women are socialized to be passive and offer at least token resistance to sexual advances lest they appear "loose". In addition, the myth that women are secretly sexual and "desire to be ravished" (Griffin, 1971) often results in a tragic combination: a woman who sincerely does not wish to engage in sexual intercourse and a man who sincerely believes that she is only teasing. Consequently, many men believe women mean "yes" when they say "no" (Muehlenhard, 1987). Continued sexual advances in the presence of nonconsent are justified as seduction, which in fact is eroticized dominance.

Chivalry, an often glorified tradition, particularly in the South, is itself an example of a sexual script that binds women and denies them freedom to choose their own sexuality. "In the system of chivalry, men protect women against men...Indeed, chivalry is an age-old protection racket which depends for its existence on rape"

(Griffin, 1971). Women pay a high price for the chivalry that is extended to them. A female is expected to remain virtuous and to defend her chastity from any "involuntary defilement". Therefore, when she is raped, the assault is considered "not only a crime of aggression against the body; it is a transgression against chastity as defined by men" (Griffin, 1971). Her voice is lost. Her nonconsent is questioned and often ignored. She is disgraced.

Consent

Within the legal system, consent is crucial to determining whether a rape has occurred. If a man is to be convicted of rape, the lawyer must prove that not only did the woman not consent to sexual activity, but also that the man realized that the woman was nonconsenting and continued to force her anyway. Often a man's sincere belief that the woman was consenting is sufficient to find him not guilty, regardless of the woman's behavior and her expression of nonconsent (Pineau, 1989). That is, her consent is constructed by his beliefs. The jury makes a decision based on whether any reasonable man would have believed she consented rather than on whether any reasonable woman would believe that she did not consent. Therefore, the legal definition of consent is often determined not from the woman's perspective, but from the man's. Again, the woman's voice goes unheard. Furthermore, nonconsent is inferred usually from evidence of resistance, which is often difficult to prove. For example, submission with little resistance, out of fear, is often taken as consent.

Contract

Pineau (1989) has suggested that the traditional assessment of consent "sets up sexual encounters as contractual events in which sexual aggression is presumed to be consented to unless there is some vigorous act of refusal" (p. 233). Essentially, whenever a woman's behavior is interpreted by a man as provocative, she has entered a contractual agreement to engage in sex. But Pineau raises two important points. First, can such a contract ever be legitimate The answer is, of course, no. Second, Pineau notes that even if the contract analogy were valid, the only acceptable resolution to a breach of contract is through due legal process; no one has the right to enforce privately the terms of a contract. And even if a man took a woman to court for breach of contract because her provocative behavior did not result in sexual intercourse, the only legal resolution would be some nonsexual compensation; the courts could not force people to have sex. Hence, the contract analogy as a means of justifying sexual aggression is illogical and invalid. However, we may ask, what supports this contractual view?

Cultural attitudes.

One's belief that the woman has consented to sexual intercourse despite her objections rests on several assumptions. Burt (1980) hypothesized that the culture and the status of women within our culture play a significant role in the attitudes toward sexual violence held by persons, particularly rapists. These attitudes and beliefs may serve to facilitate sexually aggressive acts in our culture. Recently, Koss, Leonard, Beezley, and Oros (1985) proposed a social control/social conflict model of date rape.

> "Culturally transmitted assumptions about men, women, violence, sexuality, and myths about rape constitute a rape-supportive belief system. Furthermore, stratified systems such as the American dating situation may legitimate the use of force by those in power and weaken resistance of the less powerful. Finally, acquisition of stereotyped myths about rape may result in a failure to label as rape sexual aggression that occurs in dating situations," (p. 982).

Researchers have found that adversarial sexual beliefs are more likely to be endorsed by men who report engaging in sexually aggressive behavior (Burt, 1980; Koss et al., 1985; White & Farmer, 1988; Niles, 1990). Men who report interacting with females in a sexually coercive or aggressive manner are also the same males who are more likely to view interactions between males and females as primarily exploitative.

A man is socialized from a very young age to view male-female relationships as adversarial and to view sex as a means of achieving personal enjoyment, satisfaction, and status. Therefore, when on a date, a man's attitudes toward women and his motives for engaging in sexual behavior may influence how he perceives the woman, how he interprets her behavior, and how he chooses to behave during the date (Niles, 1990).

A Feminist Alternative

As we have seen, female consent has been defined traditionally from the male perspective. Sexual scripts create a prototype of the consenting female. The prototype consists of a cluster of attributes and behaviors indicative of willingness to engage in sexual intercourse. It is assumed 1) presence of this cluster is tantamount to consent;

and 2) once this cluster is present, the woman has entered a contract and relinquished her right to say "no". Consequently, people attend to, and find credible, certain behavior (such as dress, willingness to kiss and/or pet, prior sexual history, etc.) while ignoring other behaviors (verbal and/or physical resistance). Only when the indicators of nonconsent are so extreme as to violate the prototype is the woman's resistance accepted as genuine rather than "token" and the man is judged guilty of rape. Only then is the woman absolved of responsibility for her victimization.

Traditional views render nonconsent virtually impossible. Without evidence of nonconsent, there can be no crime, and the problem of acquaintance rape becomes trivialized--it is really "just sex". The voice of the woman goes unheard. "Rape is an act of aggression in which the victim is denied her self-determination" (Griffin, 1971). A woman's sexual expression is restricted. Any behavior perceived by the male to be sexual is interpreted as consent. Therefore, a woman dare not express herself as a sexual being lest a male determine for her the extent of her expression.

A feminist alternative argues that rape must be viewed from the woman's point of view. We begin with the assumption that women desire sex based on mutual attraction, that involves minimal pressure and two-way communication about each partner's desires. Thus, it is unreasonable to think that women desire high pressure, coercive sex. Therefore, rape is an act of aggression, not seduction. This logic insists that the burden of proof be on the assailant to show that a woman consented to unattractive, coercive sex, rather on the woman to prove her resistance.

A feminist perspective also suggests that a woman has the right to be sexually provocative. Engagement in certain behaviors, such as dressing in a certain manner, flirting, expressing her sexuality through hugging, kissing, petting, is NOT tantamount to agreeing to sexual intercourse. She has the right to stop at any point without repercussions.

Finally, male-female interactions in general, and the dating situation in particular, must be reconceptualized. We must abandon the view of relationships as "cutthroat competition of opposing teams" (Pineau, 1989, p. 238), and base them on mutual respect and trust. According to Pineau, a date should be more like a friendship than a business contract, wherein partners are intuitive, sympathetic, and charitable. "Intuition will help them to interpret their partner's responses; sympathy will enable them to share what their partner is feeling; charity will enable them to care" (p. 236).

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